Chafin Coal Company *and* District 17, United Mine Workers of America. Case 9–CA–26744

August 23, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND RAUDABAUGH

On April 26, 1991, Administrative Law Judge Hubert E. Lott issued the attached decision. The General Counsel filed exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Chafin Coal Company, Huntington, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Refusing to furnish information requested by District 17, United Mine Workers of America which is relevant and necessary to performance of the Union's duties as exclusive representative of the Respondent's employees.''

2. Substitute the following for paragraph 2(a).

''(a) Furnish the information requested by the Union in Appendices A and B attached hereto.''

3. Add the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly.

''(b) On request, engage in effects bargaining with the Union.''

4. Substitute the attached notice marked ''Appendix C'' for the administrative law judge's notice marked ''Appendix B.''

[1] The General Counsel in his exceptions argued that the recommended Order was inappropriately narrow in that it referred to only one of the Union's two requests for information that the judge concluded should be satisfied. That request is attached here and to his decision as ''Appendix A.'' We modify that Order, as described below, to require the Respondent also to provide the information sought in the Union's other request, which is attached hereto as ''Appendix B.'' We shall, sua sponte, further modify the Order to require the Respondent to engage in effects bargaining as well as to cease and desist from refusing to engage in such bargaining.

APPENDIX A

UNITED MINE WORKERS OF AMERICA

CHARLES F. DONNELLY
GENERAL COUNSEL

LEGAL DEPARTMENT
1300 KANAWHA BOULEVARD E.
POST OFFICE BOX 1313
CHARLESTON, WEST VIRGINIA 25325
(304) 346–0341

MAY 1, 1989

John Rollins, Esquire
Lewis, Ciccarello & Friedberg
P. O. Box 1746
Charleston, West Virginia 25326

Re: Chafin Coal Company

Dear John:

During the course of our April 27, 1989 meeting wherein the union and representatives of Chafin Coal Company discussed resolutions of several outstanding issues, such as the satisfaction of certain grievances and arbitration cases, the NLRB case, unpaid medical bills, and the effects of Chafin's decision to no longer engage in the active mining of coal, you indicated that Chafin was in the process of some sort of transaction with Okemo Corporation which would change the complexion of our future negotiations. In response to questions from the union, you were not able to provide any further details and requested that further discussions on this point be deferred pending further consultation with your client.

As we indicated, this is to formalize the union's request for information concerning the transaction between Chafin and Okemo Corporation or any other relevant company. The requests are as follows:

(1) Please provide complete copies of any contract(s), agreement(s) or letter(s) of intent to enter into any contract(s) or agreement(s) with Okemo Corporation or any other company regarding or contemplating a transfer of any interest, whether that contract is executory or not, in any producing or processing facilities, operations, lands or equipment.

(2) What date(s) were the contract(s), agreement(s) or letter(s) of intent to enter into any contract(s) or agreement(s) referred to in question 1 above executed?

(3) If said contract(s), agreement(s) or letter(s) of intent to enter into any contract(s) or agreement(s) are prospective or executory in nature, when do they take effect and what conditions precedent, if any, must be satisfied before the transfer is effective?

(4) Provide the names of all signatories to said agreement(s), contract(s) or letter(s) of intent to enter into any contract(s) or agreement(s), and list the addresses, phone numbers and officers of each entity represented by a signatory.

(5) Provide the names, addresses, telephone numbers and titles of the person(s) signing on behalf of each signatory company.

(6) Detail all payments, royalty provisions, promises, and any other forms of consideration offered in exchange for the transferred lands, producing or processing facilities, operations or equipment.

(7) Produce any language in said contract(s) or agreement(s) pertaining to any aspect of labor relations, the National Bituminous Coal Wage Agreement, your obligations thereunder, or the United Mine Workers of America.

(8) Please provide the name(s) and title(s) of the person(s) who prepared or provided the answers to the above information requests.

Your prompt, detailed and thorough response to the above information requests will be appreciated. Please forward your answers within five (5) days of your receipt of this letter to me at the above noted address.

Should you have any questions concerning the above requests for information, feel free to call me at your earliest convenience.

Very truly yours,

Charles F. Donnelly

CFD:pje
cc - Bob Phalen
Mike Browning
Clarence Evans
Harold Porter
Lannie Maynard
Boyd Vance
Lee Doss

APPENDIX B

UNITED MINE WORKERS OF AMERICA

CHARLES F. DONNELLY LEGAL DEPARTMENT
GENERAL COUNSEL

1300 KANAWHA BOULEVARD E.
POST OFFICE BOX 1313
CHARLESTON, WEST VIRGINIA 25325
(304) 346–0341

MARCH 14, 1989

John Rollins, Esquire
Lewis, Ciccarello & Friedberg
P. O. Box 1746
Charleston, West Virginia 25326

Re: *Chafin Coal Company*

Dear John:

This is to acknowledge your letter dated March 10, 1989, regarding the need to reschedule our meeting. Although I had hoped to wrap up the outstanding issues between the parties as soon as possible, I fully understand the conflicting demands of a busy schedule and am not opposed to a rescheduling. Accordingly, this is to request that you kindly advise of dates for which you and/or your client are available to meet with the union.

On another note and in order to update our information so that our discussions are based on current information, this is to request that you kindly provide me with a list of all contract miners, leasees or licensees presently conducting or having the right to conduct mining and related operations on Chafin's coal lands in Logan County. I also request copies of any other relevant mining contracts, lease arrangements or licensee agreements for these companies.

Thank you for your prompt attention to both these matters.

Very truly yours,

Charles F. Donnelly

CFD:pje
cc - Bob Phalen
Mike Browning
Harold Porter
Lannie Maynard
Boyd Vance
Lee Doss
Neil Dingess

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to furnish information requested by the Union, District 17, United Mine Workers of America, which is relevant and necessary to the performance of the Union's duties as the exclusive bargaining representative of our employees.

WE WILL NOT refuse to engage in effects bargaining with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the information previously requested by the Union on March 14 and May 1, 1989.

WE WILL, on request, engage in bargaining with the Union about the effects on unit employees of our decision to cease direct mining operations.

CHAFIN COAL COMPANY

Damon Harrison Jr., Esq., for the General Counsel.
John A. Rollins, Esq. (Lewis, Ciccarello and Friedburg), of Charleston, West Virginia, for the Respondent.
Karen Hamrick, Esq., of Charleston, West Virginia, for the Respondent.

DECISION

STATEMENT OF THE CASE

HUBERT E. LOTT, Administrative Law Judge. This case was heard at Huntington, West Virginia, on December 19, 1989, on an unfair labor practice charge filed on August 21, 1989, by District 17, United Mine Workers of America (the Union) against Chafin Coal Company (Chafin) and on a complaint issued on October 5, 1989, alleging failure to furnish information and refusal to bargain over effects in violation of Section 8(a)(1) and (5) of the Act.

The parties were afforded an opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of hearing briefs have been received from the parties.

On the entire record and based on my observation of the demeanor of the witnesses, and in consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company is a corporation with its principal place of business in Huntington, West Virginia, where it is engaged in the business of buying, processing, and shipping of coal. The parties stipulated that during 1987 and 1988, Respondent sold coal and other materials valued in excess of $50,000 to other entities engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act, who, in turn, shipped the coal and materials directly to points outside the State of West Virginia. The parties further stipulated that up until late April 1989, Respondent was engaged in the buying and selling of coal. During that period of time, Respondent sold coal valued in excess of $50,000 to other employers and entities engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act, who, in turn, shipped the coal directly to points outside the State of West Virginia.

Based on the stipulations, I find that the Company is an employer engaging in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

Respondent and the Union were signatory to the National Bituminous Coal Wage Agreement covering the period from January 1, 1984, to February 1, 1988.

Article IA Section (a)—(work jurisdiction) provides in pertinent part:

> The production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal and transportation of coal (except by waterway or rail not owned by Employer), repair and maintenance work normally performed at the mine site or at a central shop of the employer and maintenance of job piles and mine roads, and work of the type customarily related to all of the above shall be performed by classified employees of the employer covered by and in accordance with the terms of this agreement.

Section (b) excludes all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and supervisors from the unit.

Section (g) of this article forbids contracting out of certain types of work.

Section (h) of this article entitled ''Leasing, Subleasing and Licensing Out of Coal Lands'' provides:

> (1) The employers agree that they will not lease, sublease or license out any coal lands, coal producing or coal preparation facilities where the purpose thereof is to avoid the application of this agreement or any section, paragraph or clause thereof.
>
> Licensing out of coal mining operations on coal lands owned or held under lease or sublease by any signatory operator hereto shall not be permitted unless the licensing out does not cause or result in the layoff of employees of the employer.
>
> (2) For purposes of lawfully preserving and protecting job opportunities for the employees working or laid off from a particular operation covered by this agreement, and to insure that work opportunities are not eliminated by lease or license arrangements, the employer agrees that it will not lease, sublease or license out coal mining operations which at any time were in operation by that employer and covered by this agreement, unless the conditions set forth in the following paragraph are satisfied:
>
> Leasing, subleasing or licensing out of coal mining operations covered by this agreement shall be permitted where the lessee licensee agrees that all offers of employment by such lessee—licensee shall be made (on the basis of mine seniority) to the employer's classified and laid off employees at the mine who have not secured regular employment at any other operation of the Employer covered by this Agreement, if such employment at the leased, subleased or licensed out operation is for jobs of the nature covered by this agreement, and if such employees are qualified for such jobs. The lessee—licensee shall not required to make more than one such offer of employment to each such employee.

Article XVII (seniority) contains provisions for layoff, recall, job bidding, etc. Section (h) under this article provides that signatory companies in coal producing divisions thereof, and wholly owned and controlled coal producing subsidiaries and wholly owned and controlled coal producing affiliates, shall be treated as one and the same employer for panel rights purposes.

Article XX (health and retirement benefits) contains provisions governing employee insurance and pension benefits.

Between October 1984 and January 31, 1988, the Union filed many grievances against Chafin, most of which related to the recall rights of former Chafin employees at the contractors working on Chafin coal lands. They involve the issue of contractors not hiring panel employees in accordance with the contract provisions and single employer, alter ego issues. Some of these grievances went to arbitration and were later upheld by the District Court and the Fourth US Circuit Court of Appeals. One arbitration case decided in 1986 found that Chafin and a contractor were a single employer and therefor violated the contract by not offering employment first to the Chafin panel employees. Many of these grievances and arbitration awards are still unresolved.

In a letter dated October 15, 1987, to the United Mine Workers of America's president Richard Trumka, Respondent's president John Chafin notified the Union that it would terminate the above agreement on its expiration date. In anticipation of negotiations for a successor contract, Trumka by letter dated November 12, 1987, requested certain information from Respondent.

In a letter dated January 28, 1988, from Respondent's attorney to the Union's attorney, John Rollins, in addition to suggesting that the parties meet to discuss any outstanding contract issues caused by Chafin not employing any union

members since the end of 1986, also stated that the Company realized the concern by the Union that, ''its members are protected to the extent they are employees of any of the independent companies operating on the site of the premises owned by Chafin in Logan County, West Virginia.'' Rollins also stated that he didn't see a, ''time frame problem'' because all the contractors executed ''me too'' agreements with the Union.

Rollins finally stated:

> Let me finally advise that to the extent the Union wishes to engage in collective bargaining or discuss differences in regard to employees of such companies, please do so directly with the principles of those entities. Chafin does not own, control, have common stockholders, have common directors, or management officers who have centralized control of labor relations or other ability to act for or in connection with these companies.
>
> In any event any issues that may relate to any of these matters can be discussed at our meeting . . . .

On February 24, 1988, representatives of the Union and Company met at Attorney Rollins' office for negotiations. The Union through Attorney Charles Donnelly stated that they wanted to negotiate a successor contract but that they were in no position to make a formal proposal because the information requested by the Union was never furnished. Rollins said he would look into the matter but Respondent was no longer a traditional employer because they were going to operate through contract miners like Island Creek instead of mining coal with its own employees. The meeting ended with a discussion about settling a large arbitration case which was on appeal to the the Court of Appeals for the Fourth Circuit.

On March 25, 1988, the Union filed charges against Chafin (Case 9–CA–25257) alleging refusal to furnish information. On May 11, 1988, a complaint issued alleging that on November 23, 1987, and February 24 and March 4, 1988, the Company refused to furnish information made in request attached to the complaint. Subsequently, the parties entered into a settlement agreement which was approved by the Regional Director on September 26, 1988. As part of the settlement, the Company agreed to furnish the requested information.

In the letter dated February 2, 1989, Donnelly informed Rollins of several deficiencies in the Company's responses to the Union's information request and requested dates so that the parties could resume negotiations. On February 7, 1989, Rollins in a letter to Donnelly stated that the Company had complied with all the Union's requests 3 months ago and because it hadn't heard anymore, thought the matter was closed. Rollins further stated that because Chafin had no employees, ''the relevance of contract negotiations is non-existent,'' but that the Company would meet with the Union.

By letter dated March 14, 1989, Donnelly requested that Rollins furnish the Union with a list of all contract miners' lessees or licensees conducting mining operations on Chafin Coal Lands and relevant mining contracts, lease arrangements, or licensee agreements for these companies. Rollins in a reply letter dated March 19, 1989, stated that he had forwarded the information request to Chafin and would respond shortly.

After several letters were sent back and forth, the parties finally met on April 27, 1989. At this meeting Donnelly said they would be engaged in effects bargaining. He identified several issues that were outstanding between the parties that needed addressing: An outstanding arbitration case which had been appealed by Respondent to the Fourth Circuit Court of Appeals and which affected at least eight other grievances, unpaid medical bills which were part of the medical insurance grievances, outstanding unfurnished information from the old charge, and other outstanding grievances.

When Donnelly asked Rollins about the status of the Company, Rollins said, ''there is something in the wind that will change the course of our or complexion of future negotiations.'' Donnelly asked for details and whether Okemo was in the picture. Rollins said he couldn't discuss it further, that they should defer that subject and go on to other disputed issues. The Union caucused and when they returned to the meetings stated that they would make a formal information request.

After the Union was told that Chafin was no longer a traditional coal mine because it was going to operate through contractors, Donnelly testified that the Union wanted to pursue job security proposals for some 300 of Respondent's laid-off employees patterned after the 1988 National Bituminous Coal Wage Agreement. These provisions, if agreed to, would provide job opportunities for the laid-off employees with contractors who worked Respondent's coal lands. Donnelly wanted to negotiate as part of a closure agreement or affects bargaining some job opportunities for laid-off employees of Chafin.

By letter dated May 1, 1989, the Union made a formal information request which is attached to this decision as Appendix A. The Union through witness Donnelly gave many reasons it needed the information requested. It wanted to find out who it might be dealing with in the future instead of Chafin. It needed the information to formulate bargaining proposals with regard to job security for laid-off employees. To determine whether there was any substance to the grievances already filed over contracting out. It needed the information in order to determine whether Respondent was operating as a joint employer or single employer with contractors as had been found in the past by arbitrators. The information would help determine what actions the Union might undertake to preserve bargaining unit employees rights under the 1984 agreement. It would further aide in determining whether Chafin was dealing at arms' length with its contractors. Information was further needed to process grievances arising under the 1984 agreement and to determine whether there was any successor obligations involved in the contracting, subcontracting, leasing or licensing by Chafin. Finally, the Union needed the information to engage in effects bargaining.

Many letters were sent by Donnelly to Rollins requesting the information in Appendix A from May 15, 1989, up to the filing of the instant charge. Respondent did not and has not responded to these requests.

Analysis and Conclusions

Respondent, in brief, offers as its only defense the Union's waiver of its right to bargain over effects. Respondent argues

that the Union waited too long after notification by the Company that it no longer employed unit employees and no longer was engaged in mining operations before it requested effects bargaining.

Respondent, in its brief, did not contest the relevancy of the information sought or the Union's right to engage in effects bargaining. Nor did it pursue the argument that the Board has no jurisdiction because the Company had no unit employees on the payroll.

Nevertheless, I find based on the undisputed testimony of the only witness called, that the information requested is relevant for all the reasons cited by Charles Donnelly. I further find that the Union not only had a right but an obligation to bargain over the effects of Chafin's cessation of coal mining operations. Claiming on the record that the Board has no jurisdiction because Respondent dismissed all its employees is specious at best. I have already found that based on the parties stipulations, the Board has jurisdiction over this matter. Moreover there was no assertion that Chafin does not exist as a legal entity.

Addressing the waiver issue, I find that Chafin informed the Union by letter dated January 28, 1988, that it no longer employed union members and was no longer in the coal mining business. The earlier notification of termination of contract on its expiration is in my opinion not informative or specific enough to put the Union on notice of cessation of business. From January 1988 on, the Company refused to furnish information which would have aided the Union in verifying the Company's assertions. I further find that initially, the Company misled the Union into believing that the Company would negotiate, that it shared the Union's concerns over laid-off employees, and there was no ''timeframe problem.'' It is clear based on all the grievances filed and the litigation which ensued that the Union had a legitimate concern over the relationship of Chafin to its contractors and that it could only be satisfied by reviewing the information requested. Respondent's refusal to cooperate and to meet with the Union delayed the whole process. Now, Respondent asserts its delay and refusal to negotiate as a defense, which I find without merit.

The parties met on February 24, 1988, for the purpose of negotiating a successor contract. The Union filed charges on March 25, 1988, seeking information about the status of Chafin. It didn't obtain information to verify the Company's assertions (that it ceased mining operations) until the latter part of 1988. As early as February 2, 1989, the Union requested negotiations but could not get a meeting with the Company until April 27, 1989. However prior to this date the Union on March 14, 1989, requested information which was refused. Finally at the April 27, 1989 meeting the Union was informed that ''something was in the wind'' which would change the course of negotiations. All further queries were rebuffed. On May 1, 1989, the information request was made. After many requests were ignored, the Union filed the instant charges. I find no 10(b) issue in this case based on the record evidence.

Finally it is undisputed that Respondent refused to engage in effects bargaining. Accordingly, I find that by refusing to furnish the information requested and by refusing to engage in effects bargaining with the Union, the Respondent has violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. District 17, United Mine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) and (5) of the Act by refusing to furnish information requested by the Union and by refusing to engage in effects bargaining with the Union.

4. The following employees of Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of Respondent engaged in the production of coal, including removal of over burden coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by Respondent, (repair and maintenance work normally performed at the mine site or at a central shop of Respondent and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Respondent, excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all supervisors as defined in the Act.

5. The requested information is relevant and necessary for the Union to engage in effects bargaining.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent engaged in the acts and conduct violative of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom. As a remedy, I shall recommend Respondent promptly furnish information requested in Appendix A and to bargain with the Union on request.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Chafin Coal Company, Huntington, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to furnish information requested by the Union in Appendix A.

(b) Refusing to engage in effects bargaining with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Furnish the information requested by the Union in Appendix A.

(b) Post at its facilities in Huntington, West Virginia, copies of the attached notice marked ''Appendix B.''[2] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''